

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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RICHARD COLLINS,	:	
	Plaintiff,	:
		:
		Civil Action
v.		No. 16-5671
		:
CITY OF PHILADELPHIA, et al.,	:	
	Defendants.	:

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, upon consideration of Defendant City of Philadelphia's Motion to Dismiss, it is **HEREBY ORDERED** that the Motion is **GRANTED**.

BY THE COURT:

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Robreno, J.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>RICHARD COLLINS,</b>	:	
		:
	<b>Plaintiff,</b>	:
		:
		<b>Civil Action</b>
<b>v.</b>		<b>No. 16-5671</b>
		:
<b>CITY OF PHILADELPHIA, et al.,</b>	:	
		:
	<b>Defendants.</b>	:

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**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Defendant City of Philadelphia hereby files this Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this motion, the Defendant incorporates the attached Memorandum of Law. The Defendant respectfully requests that this Court dismiss the claims asserted against it.

Date: November 8, 2016

Respectfully submitted,

/s/ Aaron Shotland  
Aaron Shotland, Esquire  
Deputy City Solicitor  
Pa. Attorney ID No. 205916  
City of Philadelphia Law Department  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 683-5434

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	:	

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Plaintiff Richard Collins state law claims against the City of Philadelphia are barred as a matter of law. Therefore, the Court should dismiss Plaintiff's claims against the City.

**I. BACKGROUND**

In his complaint, Plaintiff alleges that he was falsely arrested on March 23, 2013 and falsely imprisoned until June 13, 2014, for robbing the Red Sun Food Market located at 4542 Cottman Avenue in Philadelphia, PA. *See* Complaint at ¶¶ 10-42 (Docket No. 1). Plaintiff seeks to bring state-law claims against the City in violation of the Pennsylvania Tort Claims Act.

**II. ARGUMENT**

**A. The Court Should Dismiss Counts Plaintiff's Claims Against the City.**

The Court should dismiss<sup>1</sup> all Plaintiff's state-law claims against the City with prejudice. Plaintiff seeks to bring intentional tort claims against the City. The Pennsylvania Tort Claims

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<sup>1</sup> A plaintiff cannot survive a motion to dismiss under Rule 12(b)(6) without pleading "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under this standard, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *See id.* Put differently, while a court should accept the truth of a complaint's factual allegations, it should not credit a plaintiff's "bald assertions" or

Act generally bars individuals from suing municipalities. *See* 42 Pa. Cons. Stat. § 8541.

Although section 8542(b) of the Tort Claims Act creates a narrow exception to this immunity, this exception only applies if a plaintiff's "injury was caused by . . . negligent acts." *See* 42 Pa. Cons. Stat. § 8542(a)(2) (emphasis added); *Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1022 (Pa. Commw. Ct. 2014) (holding that the Tort Claims Act only permits suits against municipalities for "negligent acts"); *see also Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622, 636 (E.D. Pa. 2006) ("The exceptions in section 8542 apply *only* where the injury was caused by the *negligent* acts of the local agency or an employee thereof[.]") (emphases added) (internal quotations omitted). Here, Plaintiff sets forth intentional tort claims, not negligence claims. Therefore, the Court should dismiss these counts with prejudice as to the City.

Additionally, the Court should dismiss Plaintiff's negligence claim in Count 4 with prejudice. A plaintiff cannot bring a negligence claim against a Pennsylvania municipality unless one of the eight exceptions set forth in § 8542 of the Tort Claims Act applies to her case. *See* 42 Pa. Cons. Stat. § 8542(b) (permitting eight types of negligence suits, such as suits involving "vehicle liability"). The eight exceptions of § 8542 "are to be strictly construed." *Lockwood*, 751 A.2d at 1139. Here, the exceptions listed in § 8542(b) do not even arguably apply to Plaintiff's negligence claim. Therefore, the Court should dismiss Count 8 as to the City of Philadelphia.

#### Conclusion

For the reasons set forth above, the City requests that this Court grant the instant motion and dismiss the claims asserted against it.

Date: November 8, 2016

Respectfully submitted,

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"legal conclusions." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (citations and quotations omitted).

/s/ Aaron Shotland

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	:	
<b>Defendants.</b>	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the Defendant's Motion to Dismiss was filed via the Court's electronic filing system and is available for downloading.

Date: November 8, 2016

Respectfully submitted,

/s/ Aaron Shotland  
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